

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN WAMBOLDT,

Plaintiff,

v.

SAFETY-KLEEN SYSTEMS, INC.,
et al.,

Defendants.

No. C 07-0884 PJH

**ORDER GRANTING DEFENDANT'S
REQUEST FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION**

Before the court are various motions of defendant Safety-Kleen Systems, Inc. ("defendant" or "Safety-Kleen"). First defendant requests leave to file a motion for reconsideration of the court's August 21, 2007 order denying its motion for summary judgment as to plaintiff's overtime claim. In the alternative, defendant seeks leave to request certification of the court's order to pursue an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Defendant also seeks leave to file a second summary judgment motion. Finally, defendant requests a stay of all proceedings until the court has had an opportunity to reconsider the new motion for summary judgment and/or it has had an opportunity to exhaust its appellate rights.

Pursuant to Civil Local Rule 7-9(d), the court hereby GRANTS Safety-Kleen's request to file a motion for reconsideration. The court agrees with defendant that it failed to recognize the distinction between the evidence presented concerning the two separate services provided by defendant. It appears that plaintiff may have only created an issue of disputed material fact with regards to whether he transported hazardous parts washing solutions, but not as to other types of industrial hazardous waste described in Safety-

1 Kleen's motion for summary judgment. If defendant is correct in its arguments, it appears
2 there would be no factual dispute as to the transportation of hazardous waste, leaving only
3 the legal question of whether the motor carrier exemption applies.

4 Accordingly Safety-Kleen may file a motion for reconsideration of this court's prior
5 ruling on its motion for summary judgment on the basis that there is no dispute of material
6 fact as to plaintiff's transport of hazardous waste and that California's motor carrier
7 exemption applies. However, Safety-Kleen shall not reargue the same points made in its
8 original motion. Rather, Safety-Kleen should set forth additional argument that might help
9 the court decide the issues raised in the August 21, 2007 order. Both parties should
10 discuss whether there is any conflict between state and federal law regarding the
11 exemption and how to resolve that conflict if there is one, and they should identify the state
12 statutory, regulatory or decisional law that dictates or suggests that state courts do or
13 would follow federal law in applying the exemption.

14 With regard to the motion for leave to file a request for certification, the court finds
15 that in the absence of a disputed question of fact, all that remains is a legal question as to
16 the applicability of the exemption; a question that this court must decide in the first instance
17 before it would be ripe for appellate consideration. Defendant's request is, therefore
18 DENIED.

19 With regard to the motion to file a second summary judgment motion, the court
20 GRANTS the motion with certain conditions. Safety-Kleen may move for summary
21 judgment on the new legal basis described by Safety-Kleen – that plaintiff falls under the
22 United States Department of Transportation exemption for motor carriers. However, the
23 court will entertain only one more motion. Thus, the motion for reconsideration and the
24 second motion for summary judgment must be contained in one brief not exceeding 25
25 pages, and must be strictly limited to the two exemptions referred to in this order.

26 Safety-Kleen must file this single joint motion for summary judgment and for
27 reconsideration no later than **September 26, 2007**. Plaintiff shall oppose the motion no
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1 later than **October 10, 2007**. Safety-Kleen shall file a reply brief no later than **October 17,**
2 **2007**. The motions will be heard on **October 31, 2007**, unless the court notifies the parties
3 in advance of the hearing that no hearing is necessary.

4 Safety-Kleen's request to stay these proceedings, including class notice
5 proceedings, is GRANTED. All aspects of this case shall remain stayed until the court
6 resolves the motion for reconsideration and for summary judgment.

7 **IT IS SO ORDERED.**

8 Dated: September 10, 2007



PHYLLIS J. HAMILTON
United States District Judge